IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WA.No. 1705 of 2007

AGAINST THE JUDGEMENT IN OP.7260/2003 Dated 14/11/2006
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APPELLANT/2ND RESPONDENT:

PRABHAKARAN,S/O.BELLACHI,
SREENIVASA BUILDING,JANATHA COLONY,
KARMALARAM POST,SARJAPURA ROAD,BANGALORE-35.

BY ADV. SRI.D.KRISHNA PRASAD

RESPONDENTS/PETITIONER & 1ST RESPONDENT:
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1. T.KANNAN,S/O.APPA KUMBACHIMOOLA,
BANDADKA VILLAGE,KASARGOD DISTRICT.

2. LAND TRIBUNAL (SPECIAL TAHSILDAR (LR),
KASARGOD.

R1 BY ADV.MR.SURESH KUMAR KODOTH
R2 BY SR.GOVERNMENT PLEADER SMT.MEERA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1705 of 2007

Dated, this the 24th day of July, 2007

JUDGMENT

K.T.Sankaran, J.

The second respondent in O.P.No.7260 of 2003 challenges the judgment dated 14th November, 2006 passed by the learned Single Judge.

2. The writ petition was filed by one Kannan challenging Ext.P5 order passed by the Land Tribunal under Rule 136-A of the Kerala Land Reforms (Tenancy) Rules, 1970 ('Rules' for short). Kannan was admittedly the owner of the property in question. The contention of the appellant is that Kannan assigned the property in his favour as per a registered document executed in the year 1986. On the basis of that assignment deed, the appellant filed Ext.P1 application before the Land Tribunal under Rule 136-A of the Rules to correct the survey number in the purchase order and purchase certificate. Notice was issued in the application to Kannan. Kannan filed his objections. According to him, the appellant was not entitled to file that application as he was not the owner of the property. Kannan contended that the document relied upon by the appellant was executed as a result of fraud and other vitiating circumstances and that the said document is not binding on him and the property. Overruling the objections raised by Kannan, the Land Tribunal passed Ext.P5 order allowing Ext.P1 application in favour of the appellant and the survey number was directed to be corrected.

3. At the time when the writ petition came up for hearing, learned counsel appearing for Kannan submitted that civil court has passed a decree in favour of his client and that the document executed by him in favour of the

appellant/second respondent in the writ petition was set aside by the civil court. Recording that statement the learned Single Judge set aside Ext.P5 order passed by the Land Tribunal and directed the Land Tribunal to pass appropriate orders within a period of three months from the date of production of a copy of the judgment.

4. In the Memorandum of Writ Appeal, the second respondent in the writ petition, has contended that the civil court has not passed any decree as recorded in the judgment of the learned Single Judge and that the appellant is not aware of any such litigation.

5. Learned counsel appearing for the first respondent herein, namely Kannan, has produced a photostat copy of the judgment and decree in O.S.No.157 of 2003 on the file of the Munsiff's Court, Kasaragod. The copy of the judgment shows that Kannan had filed a suit for setting aside the document executed by him in favour of the appellant and that the civil court has passed a decree in favour of Kannan. Learned counsel for the appellant submits that his client was not served with any notice in the suit and that appropriate steps are to be taken to file an appeal against the judgment and decree or to file an application to set aside the exparte decree. It is also submitted that copy of the judgment was not produced before the learned Single Judge and that his client was not aware of the judgment at any point of time earlier.

6. In view of the decree of the civil court, it is sufficient to make it clear that Ext.P5 order would enure to the benefit of the owner of the property, namely Kannan, who is the petitioner in the writ petition. It is not necessary to set aside Ext.P5 order and dismiss Ext.P1 application since any order passed

by the Land Tribunal correcting the survey number would enure to the benefit of the real owner of the property. There is no dispute between the parties that the survey number of the property was not correctly shown in the purchase certificate. The dispute was on the entitlement of the appellant to file Ext.P1 application before the Land Tribunal. As per the decree passed by the civil court, the document executed by Kannan in favour of the appellant is no longer in force and, therefore, it is only just and proper to hold that Ext.P5 order would enure to the benefit of Kannan. If the civil court were to pass any subsequent decree or order, it would be binding on the parties in respect of the subject matter of dispute, as disposed of by the Land Tribunal as per Ext.P5 order.

Writ appeal is disposed of in the manner indicated above, in modification of the judgment of the learned Single Judge.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns